

**STATE OF WEST VIRGINIA
WEST VIRGINIA SECURITIES COMMISSION
BEFORE THE SECURITIES COMMISSIONER
CHARLESTON, WEST VIRGINIA 25305**

**ORDER NO. 08-1350 VACATING ORDER NO.93-097, AS
AMENDED, PROVIDING DEFINITIONS FOR INVESTMENT
ADVISER REPRESENTATIVES AND BRANCH OFFICES**

Pursuant to the authority granted to him by Chapter 32, of the West Virginia Code, 1931, as amended ("The West Virginia Uniform Securities Act"), herein after sometimes referred to as the "Act", and particularly Chapter 32, Article 4, Section 412 of the Act, the Commissioner of Securities ("Commissioner") has reviewed the adoption of ORDER NO. 93-097, as amended.

Pursuant to said review, the Commissioner is of the opinion and finds as follows:

FINDINGS OF FACT

1. Order No.93-097 sets forth definitions and procedures for both investment adviser representatives and branch offices.
2. The definitions and procedures set forth in Order No. 93-097 are obsolete or in need of revision based on further analysis.
3. It is in the interest of clarity that new orders dealing with the issues of definitions and procedures for investment adviser representatives and branch offices be adopted separately.
4. The Order adopted herein deals solely with the definition and procedures for branch offices.
5. This Order is necessary and appropriate in the public interest.

CONCLUSIONS OF LAW

1. Chapter 32, Article 4, Section 412(a) of the Act provides that the Commissioner may from time to time make orders as necessary to carry out the provisions of the Act.
2. This Order is consistent with the purposes fairly intended by the policies and provisions of the Act as required in Chapter 32, Article 4, Section 412(b) of the Act.

Branch Offices

1. "Branch Office" as defined in Chapter 32, Article 4, Section 401(q) of the West Virginia Code states:

"Branch office" means any location other than the main office, identified to the public, customers or clients as a location where a broker-dealer or investment adviser or federal-covered adviser conducts a securities or investment adviser business. Branch office does not include: (1) A location identified solely in a telephone directory line listing or on a business card or letterhead if: (A) The listing, card or letterhead also includes the address and telephone number of the broker-dealer or investment adviser or federal covered adviser where the individuals conducting business from the location are directly supervised; and (B) no more than one agent or investment adviser representative transacts business on behalf of the broker-dealer or investment adviser or federal-covered adviser from an identified location; or (2) Any other location as the commissioner may determine.

2. A "branch office" is further defined herein as any location where one or more associated persons of a member regularly conducts the business of effecting any securities transactions, or inducing or attempting to induce the purchase or sale of any security, or is held out as a branch office, unless said location meets the requirements of §32-4-401(q)(1) above.

3. Pursuant to §32-4-401(q)(2) above, the definitions of "branch office" does not include:
- A. Any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;
 - B. Any location that is the associated person's primary residence; provided that
 - (i). Only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;
 - (ii). The location is not held out to the public as an office and the associated person does not meet with customers at the location;
 - (iii). Neither customer funds nor securities are handled at that location;
 - (iv). The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such associated person;
 - (v). The associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with this Order;
 - (vi). Electronic communications (e.g., e-mail) are made through the member's electronic system;
 - (vii). All orders are entered through the designated branch office or an electronic system established by the member that is reviewable at the branch office;

- (viii). Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and
- (ix). A list of the residence locations is maintained by the member.
- C. Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the member complies with the provisions of paragraph 3-B-(i) through (viii) above;
- D. Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;
- E. Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than twenty-five (25) securities transactions in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised;
- F. The Floor of a registered national securities exchange where a member conducts a direct access business with public customers; or
- G. A temporary location established in response to the implementation of a business continuity plan.
4. Notwithstanding the exclusions in paragraph 3 above, any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered to be a branch office.
5. The term "business day" as used herein shall not include any partial business day provided that the associated person spends at least four hours on such business day at

his or her designated branch office during the hours that such office is normally open for business.

6. An investment adviser or broker-dealer must list on Schedule E of Form ADV and Schedule E on Form BD, respectively, all branch offices as that term is defined above.

Entered this 14th Day of May, 2008

Glen B. Gainer, III
State Auditor
Commissioner of Securities

By: Lisa A. Hopkins
General Counsel
Senior Deputy Commissioner of Securities